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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,888	01/25/2002	Marcille Faye Ruman	KCC-15,463.1	1770
35844	7590	07/12/2004	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			ANDERSON, CATHARINE L	
		ART UNIT	PAPER NUMBER	
		3761		

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/056,888	RUMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	C. Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 12 April 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-46 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 14-17, 26-33, 35, 38, and 41-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (3,039,466).

Wilson discloses a disposable pant garment, as shown in figure 1, comprising a chassis having a front and a back direction. Front side panels 28 and 30, and back side panels 22 and 24, extend from the chassis, as shown in figure 3. The front and back side panels 22, 24, 28, and 30, each have a waist end edge and a leg end edge, and a distal edge extending therebetween, as shown in figure 3. The distal edge of each side panel defines a vector that crosses the longitudinal axis of the chassis at congruent angles.

With respect to claims 2 and 16, the angles defined by the side panels are acute angles, as shown in figure 3.

With respect to claim 3, the distal edge of the front side panels 28 and 30 defines a vector extending from the leg end edge towards the waist end edge, and the distal edge of the back side panels 22 and 24 defines a vector extending from the waist end edge to the leg end edge, as shown in figure 3.

With respect to claim 4, the front and back side panels are engagable along their distal edges to create a side seam, as shown in figure 2.

With respect to claims 5, 6, and 17, the front and back side panels are releasably and refastenably engagable, as disclosed in column 5, lines 16-25.

With respect to claim 14, the front and back panels may be bonded to the chassis, as shown in the embodiment of figures 19 and 21.

With respect to claim 15, the front and back panels may be integral to the chassis, as shown in the embodiment of figure 3.

With respect to claim 26, 32, and 33, the front and back panels each are constructed from at least two pieces of material, as shown in figure 19 and 21. One piece is proximal the absorbent chassis, shown in the figures as being the inner layer of the panels, and the other is distal the chassis, shown in the figures as the outer layer of the panels.

With respect to claim 27, the angles defined by the side panels are acute angles, as shown in figure 3.

With respect to claim 28, the distal edge of the front side panels 28 and 30 defines a vector extending from the leg end edge towards the waist end edge, and the distal edge of the back side panels 22 and 24 defines a vector extending from the waist end edge to the leg end edge, as shown in figure 3.

With respect to claim 29, the front and back side panels are engagable along their distal edges to create a side seam, as shown in figure 2.

With respect to claims 30 and 31, the front and back side panels are releasably and refastenably engagable, as disclosed in column 5, lines 16-25.

With respect to claims 35 and 38, the back side panel comprises elastomeric materials including the elastic provided in edge portion 21, as disclosed in column 3, lines 7-10.

With respect to claims 41 and 42, the distal edges of the front and back side panels are not collinear, as shown in figure 3.

With respect to claims 43 and 44, the fastening components are integrated into the side panels, as shown in figure 19 and 21.

With respect to claims 45 and 46, the garment is fastenable by overlapping the front and back side panels, as shown in figure 2. The front side panel therefore overlaps the back side panel, and vice versa.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-12 and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (3,039,466) as applied to claims 6 and 17 above, and further in view of Anderson (5,062,839).

Wilson discloses all aspects of the claimed invention with the exception of hook and loop fasteners.

Anderson discloses a disposable pant garment 10, as shown in figure 1, having front and back side panels 22, 24, 26, 28. The front and back side panels are releasably engagable by means of fastening components 18. The fastening components 18 comprise hook and loop fasteners that allow for easy removal of the garment, as described in column 4, lines 27-37.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the garment of Wilson with hook and loop fasteners, as taught by Anderson, to allow for the easy removal of the garment.

With respect to claims 9, 10, 20, and 21, Anderson remains silent as to which member of the hook and loop fasteners is located on which side panel. It would have been an obvious matter of design choice to place the loop fastener on the back side panel and the hook fastener on the front side panel, as the applicant has not shown that such a placement serves any particular purpose or solves any specific problem.

With respect to claims 11, 12, 22, and 23, Anderson discloses the fasteners 18 extending from a first surface of the garment on the back side panel, and a second surface of the garment on the front side panel, as shown in figure 1.

With respect to claim 24, Wilson discloses the front and back panels may be bonded to the chassis, as shown in the embodiment of figures 19 and 21.

With respect to claim 25, Wilson discloses the front and back panels may be integral to the chassis, as shown in the embodiment of figure 3.

Claims 13, 34, 36, 37, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (3,039,466) as applied to claims 6 and 17 above, and further in view of Ashton et al. (6,443,940).

With respect to claims 13 and 34, Wilson discloses all aspects of the claimed invention with the exception of a line of weakness on the side seam.

Ashton teaches the use of a line of weakness along the side seam of a disposable pant garment in order to facilitate the easy removal of the garment, as disclosed in column 5, lines 13-15.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the garment of Wilson with a line of weakness, as taught by Ashton, to facilitate the easy removal of the garment.

With respect to claims 36, 37, 39, and 40, Wilson discloses all aspects of the claimed invention with the exception of the front and back side panels being elastomeric.

Ashton discloses front and back side panels comprising elastomeric materials that allow the front and back side panels to stretch in a direction transverse to the longitudinal axis of the garment, as described in column 4, lines 31-38. The elastomeric side panels provide the garment with a more comfortable fit, as disclosed in column 4, lines 44-50.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the garment of Wilson with elastomeric side panels, as taught by Ashton, to provide the garment with a more comfortable fit.

***Response to Arguments***

In response to applicant's argument that Wilson fails to teach a "disposable pant garment," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The pant garment disclosed by Wilson is fully capable of being disposed of in its entirety.

In response to applicant's argument that Wilson fails to disclose two-piece-panels and an elastomeric side panel, it is noted that the applicant does not claim exact dimensions of these panels, and the materials disclosed by Wilson as the reinforcement strip and elastic strip are fully capable of functioning as two-piece-panels and an elastomeric side panels, respectively.

In response to applicant's argument that Wilson fails to disclose distal edges of the side panels for each side of the garment being not collinear, it is noted that when a straight-edge is placed along the distal edges of the left side of the garment shown by Wilson in figure 4, the distal edges are shown to be not collinear.

In response to applicant's argument that Wilson fails to disclose fastening components being integral with the surface of the side panel, it is noted that the

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snap are attached to the chassis such that they are then formed as a unit, or integral to each other.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvert John can be reached on (703) 305-1025. The fax

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLA  
cla  
July 7, 2004

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700